



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/742,307

12/19/2003

Kenneth W. Whitley

79557

5667

26253 7590 03/19/2008
David W. Highet, VP & Chief IP Counsel
Becton, Dickinson and Company
1 Becton Drive
MC 110
Franklin Lakes, NJ 07417-1880

EXAMINER

MAI, TRI M

ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

03/19/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/742,307 | Applicant(s) WHITLEY, KENNETH W. | |
| | Examiner Tri M. Mai | Art Unit 3781 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Art Unit: 3781

1. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear what comprises right cylindrical section and the straight end portions of the right cylindrical section. Furthermore, “right cylindrical section” and “straight end portions” have no antecedent basis in the specification.

2. Claims 1-8 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 7,247,471 in view of Gilbert ‘770 and Norwood, and further in view of either JP 6-345095 or DE 4234913. Claims 1-13 of U.S. Patent No. 7,247,471 teaches the helical pleat. Claims 1-13 meets all claimed limitations except for the apex being equal from the outer apex and the bottom wall and the top wall terminate at a diameter equal to the diameter defined by the outer apex. Gilbert teaches that it is known in the art to provide an apex being equal from the outer apex and the bottom wall and the top wall terminate at a diameter equal to the diameter defined by the outer apex. Thus, to provide the apex being equal from the outer apex and the bottom wall and the top wall terminate at a diameter equal to the diameter defined by the outer apex would have been obvious to provide the desired top and bottom for the container and to provide the desired type of pleating for the container.

With respect to the new limitation of the pleat terminating along straight end of the right cylindrical section, as best understood view of the 112 matters above, either JP ‘095 or DE ‘913 teaches that it is known in the art to provide the two right cylindrical sections. Thus, to provide

Art Unit: 3781

the two right cylindrical sections would have been obvious to provide selected area to be used for cell growth.

3. Claims 1-4, and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker (3946903) in view of either JP 6-345095 or DE 4234913. Parker teaches a bottle having a bottom wall formed by portion 2 in Fig. 2 including the slanted sidewall at numeral 2, sidewall and a top wall the bottom wall being formed unitarily with and having a generally having the same diameter as the sidewall. Parker also teaches first and second inner apices 13 being located generally equal from the outer apex 12. With respect to the bottle being used for cell growth and the bottom wall being compatible with cell growth, it is submitted that it is an intended use and the bottle as claimed does not impart any structure over the bottle in Parker. Either '095 or DE '913 teaches that it is known in the art to provide the collapsible section between two right cylindrical sections. Thus, to provide the two right cylindrical sections so that the collapsible section to be terminated along straight end portions would have been obvious to provide the selected collapsed section and/or the desired volume of the container.

It would have been obvious to one of ordinary skill in the art to provide the thickness as claimed to provide the desired thickness for the container.

Regarding claim 7, it would have been obvious to one of ordinary skill in the art to provide the pitch as claimed to provide the desired angle for the helical pleat.

Regarding claim 8, it would have been obvious to one of ordinary skill in the art to provide the distance as claimed to provide the desired size for the pleat.

4. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2001-335036 in view of either JP 6-345095 or DE 4234913. JP '036 teaches a sidewall formed with

Art Unit: 3781

at least one helical pleat as claimed. With respect to the bottle being used for cell growth and the bottom wall being compatible with cell growth, it is submitted that it is an intended use and the bottle as claimed does not impart any structure over the bottle in JP '036. Either '095 or DE '913 teaches that it is known in the art to provide the collapsible section between two right cylindrical sections. Thus, to provide the two right cylindrical sections so that the collapsible section to be terminated along straight end portions would have been obvious to provide the selected collapsed section and/or the desired volume of the container.

Regarding claim 5, note that helical pleat is interrupted by a plurality of planar sections at portion 5.

5. Claims 1-4, and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Gilbert (RE38770) in view of either JP 6-345095 or DE 4234913. As set forth above, either '095 or DE '913 teaches that it is known in the art to provide the collapsible section between two right cylindrical sections. Thus, to provide the two right cylindrical sections so that the collapsible section to be terminated along straight end portions would have been obvious to provide the selected collapsed section and/or the desired volume of the container.

Regarding claim claims 4, 6 and 8, to provide the plastic material with the thickness as set forth in claim 4, and the specificities in claim 6 and 8 would have been obvious since they are providing the desired thickness/proportion for the sidewall of the container.

6. Applicant's arguments with respect to the claims have been considered but are moot in view of the new grounds of rejection.

Art Unit: 3781

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3781

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tri M. Mai/
Primary Examiner, Art Unit 3781